

**REGULAR STATE BANKING BOARD MEETING
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

May 10, 2007

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:00 a.m., Thursday, May 10, 2007.

MEMBERS PRESENT: Timothy J. Karsky, Chairman
Ron Braseth, Member
Bill Daniel, Member
Loren Henke, Member
Launa Moldenhauer, Member
Roger Monson, Member
Anita Quale, Member

MEMBERS ABSENT: None

ALSO PRESENT: Robert J. Entringer, Secretary
Douglas D. Grenz, Chief Examiner – Banks
Aaron Webb, Assistant Attorney General
Tom Metelmann, Financial Institutions Examiner

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on March 6, 2007, the special meetings held March 9 and 29, 2007, April 11, 2007.

It was moved by Member Moldenhauer, seconded by Member Monson, and unanimously carried to approve the minutes.

ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION

Assistant Commissioner Entringer noted the Western State Bank, Devils Lake; Citizens State Bank of Lankin, Lankin; First Western Bank & Trust, Minot; and Northland Financial, Steele, are amending their Articles to provide for perpetual existence and are using the suggested language which states “The corporation shall have perpetual existence unless sooner dissolved according to the provisions of Title 6 of the North Dakota Century Code or unless its franchise is forfeited by operation of law”.

It was moved by Member Henke, seconded by Member Monson, and unanimously carried to approve the Articles of Amendment for Western State Bank, Devils Lake; Citizens State Bank of Lankin, Lankin; First Western Bank & Trust, Minot; and Northland Financial, Steele.

2007 ANNUAL ASSESSMENT POLICY

Chairman Karsky reviewed his Memorandum noting that every year the State Banking Board must set the assessment for state-chartered banks to defray the expenses of the bank/trust division of the Department. Chairman Karsky noted the assessment schedule has not been changed since it was implemented in 1989, although the Board has given credits in past years.

Chairman Karsky stated he was pleased to announce the schedule will be kept the same, along with providing a 20% credit to the banks/trust companies, if the Board so desires.

Chairman Karsky stated that based on the projected carryover at the end of fiscal year 2007, he is fairly confident that allowing the 20% credit would still provide sufficient revenue through the assessments to fund the expenses for the next fiscal year.

Chairman Karsky also noted that in the past several years the time spent by the Commissioner and Assistant Commissioner seems to be more focused on the consumer division and so we have reduced the percentage of time allocated to the bank/trust division. Chairman Karsky indicated over the next year we will be undertaking a complete rewrite of the banking code in cooperation with the North

Dakota Bankers Association and the Independent Community Banks of North Dakota. In conjunction with that, Chairman Karsky stated he would like the Board to consider including in that legislation the ability of the State Banking Board and State Credit Union Board to set the Commissioner's salary instead of the Governor. The Governor would obviously still appoint the Commissioner, but continued that part of the problem we have within the Department is the ability to stay competitive with salaries for our field examiners, and if the Board would set the salary of the Commissioner we could possibly alleviate some of the compression that restricts the Department's ability to provide salary increases to our longer term employees.

Member Moldenhauer asked what procedures we would have to be following in order to make this change, and Chairman Karsky stated it would have to be a legislative change. Member Moldenhauer asked if Chairman Karsky had talked to the Governor's Office about this change, and Chairman Karsky stated he had.

Member Braseth noted that is the issue, that the Department is funded by the banks and the credit unions, rather than taxpayer dollars.

Chairman Karsky stated this is something to consider as it really is an issue that does come into the assessment level.

It was moved by Member Moldenhauer, seconded by Member Quale, and unanimously carried to approve the Annual Assessment Policy for State-Chartered Banks allowing for a 20% credit.

APPLICATION BY STATE BANK & TRUST, FARGO, TO ESTABLISH AN INTERSTATE BRANCH AT 128 WEST CAVOUR AVENUE, FERGUS FALLS, MN

Chairman Karsky indicated we needed to add some people to the meeting via conference call, and Member Quale asked whether we were adding State Bank & Trust representatives, and whether we would have to make a decision while they are on the phone. Chairman Karsky indicated the people being added via conference call are only to listen, noting that Security State Bank in Fergus Falls will be on the call, as well as its attorneys, Karen Grandstrand and Dave Bunde, but that attorneys for State Bank & Trust, Fargo, would not be on the call.

Chairman Karsky stated the Board should not discuss anything further until the individuals have been added to the meeting.

The following individuals were added to the meeting at 9:15 a.m.

Mike Solberg, Fargo
Blake Nelson, Fargo
Rod Jordahl, Fargo
Bill Russell, Fargo
Dick Solberg, Fargo
Jeff Stanislawski, Fergus Falls
Paul Lindholm, Fergus Falls
John Blume, Fergus Falls
Val Fick, Fergus Falls
Renee Lemke, Fergus Falls
Karen Grandstrand, Minneapolis
Dave Bunde, Minneapolis
Bo Hurtig, Minneapolis

Chairman Karsky indicated it is time to consider the application by State Bank & Trust, Fargo, to establish an interstate branch in Fergus Falls and make a decision.

Chairman Karsky noted that Secretary Entringer had taken a roll call and all interested parties are present, adding we are not having a hearing today, and will be making a final decision. Chairman Karsky stated the parties on the conference call are to listen and will not be allowed to participate in today's meeting.

Chairman Karsky stated the Board should have received two briefs from both parties; all Board members indicated they had received the briefs.

Chairman Karsky pointed out the State Banking Board will need to consider in its decision today North Dakota Century Code Section 6-08.4-03, and read this Section to the Board, noting while he read that statute an application had been filed by State Bank & Trust with the FDIC.

Chairman Karsky then reviewed Section 6-03-13.3 of the North Dakota Century Code, specifically the criteria for approval that the Board must consider.

Chairman Karsky stated as far as proceeding, the Board could discuss the briefs that were provided or could simply go through the criteria and poll each member as to whether they felt the criteria had been met.

Member Quale stated she felt the Board should review the criteria. Chairman Karsky stated that is how the Board reviewed its decision with regard to Dakota Community Bank's application.

Chairman Karsky began with the interstate section in Section 6-08.4-03 of the North Dakota Century Code:

Subdivision 1 states the proposed transaction will not be detrimental to the safety and soundness of the North Dakota state-chartered banks.

Chairman Karsky asked if any of the members had any thoughts or concerns regarding this criterion.

Member Henke stated he felt it was demonstrated that State Bank & Trust is a solid financial institution, adding it had done this type of project many times before, and concluding he felt it was not an issue.

Member Moldenhauer agreed the strength of State Bank & Trust is not an issue.

Member Quale stated she does not feel it is an issue.

Members Braseth and Monson indicated they also agreed it was not an issue.

Chairman Karsky indicated he also agreed, adding that not only will it not affect State Bank & Trust, but any other state-chartered bank.

Subdivision 2 states whether any new officers and directors are qualified and possess appropriate experience and financial responsibility.

Chairman Karsky asked if the Board wanted to discuss what they felt that statement actually meant. Chairman Karsky stated there are no new officers or directors listed in this application, adding it will be the same Board of Directors at State Bank & Trust. Chairman Karsky stated when you look at the past examinations of State Bank & Trust there have not been any management issues,

adding it is a very solid board that represents the community very well. Chairman Karsky continued when looking at the officers, there are a number of new officers, but in this case he indicated it was his focus on the managing officer of this prospective branch. Chairman Karsky added they are still under the control of the Fargo office and their policies and philosophy.

Member Monson indicated he is referring to the resume submitted in the application for the proposed manager, noting that he does have the necessary qualifications, experience, and education and training, nor was there anything in the testimony that reflected on his inability to perform this function.

Member Braseth indicated he agrees with Member Monson, adding that the post-hearing brief alluded to illegal conduct of some of the proposed officers; and also alluded to the fact that they are regarded as experienced and well-connected banking executives, adding that their character and fitness was challenged, but continued that he would agree with Member Monson that in the end their background would qualify them for that position.

Member Quale indicated she would agree they have the experience and financial responsibility; however, if something were to come of the case or if for some reason they are not allowed to take over the position, do they have a backup plan for the manager. Member Quale stated at this time she is not convinced there is a management plan in place.

Chairman Karsky asked if other Board members had any thoughts on Member Quale's comments.

Chairman Karsky questioned whether there is a lawsuit pending at this time, continuing that we are not aware of any lawsuit.

Member Braseth questioned how you could quantify any unknown issues or factor in as a contingency with the breadth and depth of the management team State Bank & Trust has in place in its organization that would not have an impact on this issue.

Member Henke indicated he agreed with Member Braseth.

Member Moldenhauer indicated this has been her biggest issue to deal with, continuing that she has a problem with the allegations that were brought out in

particular with the ag loan officer; however, after thinking about this for over a month that she did feel the management and directors will deal with it no matter what. Member Moldenhauer continued that after thinking about this, the management and directors are the same and if they come up with these issues they are going to have to deal with it.

Member Henke stated he agrees with what has been said as far as State Bank & Trust having the depth of staff and if something should happen with the current management in Fergus Falls, MN, they should be able to replace that person because they have several other facilities where a similar instance could happen, adding that he does not feel this is an issue when you take a look at the whole organization. Member Henke continued that some of the testimony heard dealt with a breach of fiduciary duty by some Security State Bank of Fergus Falls employees while they were employed in Fergus Falls. Member Henke indicated he thought there was a clarification of that from the administrative law judge that it was not an issue this Board was to address; if Security State Bank of Fergus Falls wants to continue pursuing this avenue this is not the venue, but there are other courts that would handle the problem they had with the employees that left. Member Henke indicated he agreed with Member Moldenhauer that it is an unfortunate incident that you could lose a significant amount of staff, and we all realize this can happen to us, adding that the situation at Security State Bank of Fergus Falls is not entirely unique, as it is happening all over the country in all types of businesses. Member Henke stated he feels it comes down to is that State Bank & Trust has the expertise and staff to take care of any management issues; therefore, if Security State Bank of Fergus Falls has an issue with activities that the people had conducted while under their employ, that is something that should be taken up in another venue.

Chairman Karsky stated his thoughts were when you look at the second brief filed by the protestants which states the actions of these proposed officers should be investigated, adding that a lot of the issues brought up and the Board said were not relevant; however, if there are ever charges against any of these people and they are convicted of a crime, he is confident that the State of North Dakota, Department of Financial Institutions, and this Board would take action to remove those individuals from banking forever.

Chairman Karsky continued that in the past we have had complaints from others that an employee has left and taken information, and we have always told the bank that is a civil matter, adding that even if the Board looked at it, what are

we going to do because we cannot put a person in prison, cannot charge them with a federal or state violation, adding we are not a court of law.

Chairman Karsky stated he does not think the Board is condoning this, but it comes down to ethics. Chairman Karsky also noted in the first brief the protestants talked about how these officers were persuading people to change banks while they were employed by Security State Bank of Fergus Falls, adding that is their job and if they were doing that while employed with Security State Bank of Fergus Falls it may not be a good practice.

Member Moldenhauer added the fact is that they did not get to defend themselves, which leaves things up in the air.

Chairman Karsky stated in the Protestants brief they noted that those issues were not discussed in State Bank & Trust's brief, although the Board heard a number of times during the hearing that they did not think that was relevant and therefore they probably would not address it.

Member Quale stated while it is not this Board's position to determine whether they are guilty or not; however, at this point we are not certain that they are going to be the management of this branch if something does happen in the future, so how can you say they are the ones that are qualified and have the financial responsibility when a month or so into this they may gone.

Chairman Karsky indicated that could happen at any bank where if an employee is convicted of embezzlement they leave and we have to deal with that through a safety and soundness issue at that time. Chairman Karsky indicated he agrees with Member Henke as far as the depth of management at State Bank & Trust, adding it is like a hiccup if somebody leaves a branch, because they have enough people in Fargo to send someone to manage this branch, and also noted that the bank's policies are implemented system wide. Chairman Karsky stated this is not like a smaller bank where you have one or two people running the institution and if something like this would happen it is a completely different situation.

Chairman Karsky indicated he felt if there were charges levied State Bank & Trust could find someone from one of their other branches in Minnesota or from the main bank to run this facility.

Member Moldenhauer stated she felt this is an issue in that it is not 100%, but is it enough to say that there is something to worry about, which she believes is not the case.

Member Monson agreed that the size of the organization and the depth of management should be able to cover any removals, etc., adding that when he gave his response he was looking at the qualifications of the individual by virtue of his past banking experience and that the personal allegations are another issue which he is not addressing at this time.

Member Henke indicated he agrees with Member Monson that the proposed manager will be able to handle the situation and that he has had a lot of experience in banking. Member Henke stated we have to remember this is a branch and he is not a president of a bank who has to be familiar with asset liability, pricing, or human relations issues, adding that he does not feel this individual's job description will vary a great deal from what he was presently, although he may supervise more people. Member Henke stated the bottom line is that State Bank & Trust is still going to call the shots and this individual is simply a layer in management.

Chairman Karsky stated he should make it known that we do have a full Board present and asked Member Daniel if he plans to vote on the application since he was not at the hearing. Member Daniel indicated he would abstain.

Chairman Karsky asked if any of the Board members had additional comments on this criterion, adding that he is aware that Member Quale has some concerns.

Member Quale stated after listening to Member Henke's comments with respect to the layering of management, indicating it is correct that the bank will be able to replace or move someone into that position if necessary.

Chairman Karsky read the third criterion of Section 6-08.4-03 of the North Dakota Century Code which states the proposed transaction is consistent with the convenience and needs of the communities to be served by the bank in this state and is otherwise in the public interest.

Member Moldenhauer asked exactly what “this state” means, and Chairman Karsky asked Assistant Attorney General Webb for clarification. Assistant Attorney General Webb indicated it is North Dakota.

Chairman Karsky indicated it is his feeling nothing much will change with regard to this transaction as far as the North Dakota bank is concerned, adding that nothing changed when it opened the other locations in Minnesota.

Member Moldenhauer indicated if nothing else it is a plus for the North Dakota bank because it provides more locations and assets.

Member Monson indicated he agrees and does not believe it will impact State Bank & Trust to do what they already do, adding this is not an issue.

Assistant Attorney General Webb interjected that in the second part of the test in Section 6-03-13.3(1) it deals with the convenience, needs, and welfare of the people of the community and area served, which would be Fergus Falls, so both sides are covered under this same type of criterion.

Member Braseth indicated this will enable State Bank & Trust to provide better service to its customers who might have summer homes in the lake area and their main home in Fargo.

Member Quale indicated she did not feel it would be an issue.

Member Henke indicated he did not feel the customers of State Bank & Trust in whatever communities they are in North Dakota will see a decline in their services.

Chairman Karsky moved on to Section 6-03-13.3 of the North Dakota Century Code, and the first criterion is the convenience, needs, and welfare of the people of the community and area served. Chairman Karsky stated that both of the briefs have a different perspective on what is happening, but when you read the briefs from State Bank & Trust and which also came out at the hearing, they have a substantial number of customers in that area and by opening a branch there an argument can be made that it is a convenience and need to their existing customers, and also to expand its operation and make it a convenience and need for the people in Fergus Falls by providing another bank to do business with.

Member Quale indicated she did not feel this would be an issue, adding State Bank & Trust already has customers in the area and it gives people another choice for banking.

Member Moldenhauer stated she felt Security State Bank of Fergus Falls tried to pose a gloom and doom scenario on Fergus Falls, and in some of the applications the Board has looked at we have seen sales tax receipts, and thought the reason this was not done is because it was not such a gloom and doom situation. Member Moldenhauer indicated she feels it is probably quite the opposite and that Fergus Falls is probably going to grow because of the lakes. Member Moldenhauer stated there are a lot of towns much more heavily “banked” than Fergus Falls, and that she believes this will be good for Fergus Falls.

Member Henke agreed with Member Moldenhauer, and added when looking at his community he feels they are more “banked” than Fergus Falls, so he does not feel this is an issue. He added when you look at the projections it shows Fergus Falls is a growing community, which was stated in testimony and is noted in the transcript, including that by the year 2030 they are projecting a 37% increase in Fergus Falls’ population; Otter Tail County anticipates a 40% growth over the next 25 years. Member Henke added the lakes are a beautiful area and people will continue to gravitate there, and that he would not be surprised if other institutions branch into this area.

Member Braseth noted they already have approximately 3,000 deposit accounts and 1,600 loan customers, which speaks for itself.

Chairman Karsky added that when you get into the broad sense of convenience and needs, one of the things that were brought out is that State Bank & Trust would have longer hours, which is a convenience, and that may make the other banks extend their hours which would benefit everyone in the community.

Chairman Karsky stated in the second brief filed by Security State Bank of Fergus Falls, they stated this branch was not in the public interest for an independent family-owned bank to be severely injured in this way, and is most certainly not in the public interest for bank officers to commit the kind of illegal and unethical acts alleged. It further stated to ensure the safety and soundness of banks in North Dakota this Board must look into these kinds of allegations and must take these allegations seriously and investigate them.

Chairman Karsky stated there is really nothing in that part that says anything about the public interest and when referring to convenience and needs, he believes another institution in this area is another choice. Chairman Karsky continued that in their second brief they also talk about the fact that they feel the Fergus Falls area is well served by the existing banking institutions, but as Member Henke said, we have seen other communities which are a lot more heavily “banked”. Chairman Karsky stated we have had three facility applications for one small town at the same time and all three applications were approved and are doing fine. Chairman Karsky stated he feels it is a plus to have this branch open in Fergus Falls, to be able to serve these people and they may offer additional types of services that are not available at this time. Chairman Karsky concluded he believes the applicant meets this criterion.

Chairman Karsky stated the second area of Section 6-03-13.3 refers to the financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.

Member Monson stated as we are looking at the applicant as far as the asset and capital size, the locations, and the spread of risk over many different economies, he feels this is not a concern.

Member Braseth stated this is not an issue he was concerned with.

Member Quale stated she feels the bank has shown it has the financial strength to open another branch.

Member Braseth added the bank is very well capitalized and a well performing bank.

Member Moldenhauer stated that State Bank & Trust has had a long history of growth and good management, and she does not feel that will change.

Member Henke stated he feels the cost of opening this branch in the whole scheme of State Bank & Trust’s expense structure is like a blip on the radar, adding he does not feel it is an issue.

Chairman Karsky stated that without going into the closed session, we have all seen the examination reports and there has never been an issue. Assistant Commissioner Entringer stated there are no issues whatsoever with this bank.

Chairman Karsky stated this is probably the easiest of the criterion and was not really addressed in the briefs, other than State Bank & Trust supported that they are able to do this, and the protestants did not really address this criterion.

Chairman Karsky reviewed the third criterion of Section 6-03-13.3 which states whether other banks will be seriously injured by the approval of the application. Chairman Karsky asked Assistant Attorney General Webb if he would like to make any comments on this. Assistant Attorney General Webb stated that during the hearing the Board discussed this issue at length as far as what they determine the test was for serious injury and you should stick to that determination and not consider evidence you found to be irrelevant. Assistant Attorney General Webb stated you should look at the evidence you feel is part of that test, weigh it appropriately, and then make your decision.

Chairman Karsky stated one of the things that was set out in the brief is that \$7.5 million went out the door of Security State Bank of Fergus Falls fairly quickly, adding that we do know the Department approved a loan production office which it had received an application for and they met the criteria, noting that we did correspond with the Department of Commerce in Minnesota and the application was approved. Chairman Karsky stated they have had the authority to solicit loans for approximately one month. Chairman Karsky indicated when the Protestants say they lost \$7.5 million; however, they received cash in exchange for those loans which can be reinvested either in securities or some other type of investment, pay down borrowings or whatever they had, but the money is not out the door. Chairman Karsky continued they also have the opportunity to compete for additional loans or to go after additional loans. Chairman Karsky stated when you look at the size of the protestant and we talk about the expenses in relation to establish a branch for State Bank & Trust, he would imagine when you look at the seasonal fluctuations for an ag bank, you can lose \$7 to \$10 million in loans between November and March and you still stay profitable and don't have those concerns.

Chairman Karsky stated in his opinion he would expect other institutions to lose loans, as State Bank & Trust is going to take loans from more than just Security State Bank of Fergus Falls. Chairman Karsky added we have not heard from those other institutions in Fergus Falls regarding this application. Chairman Karsky concluded he does not feel the loans that were lost demonstrate serious injury.

Member Quale stated this a difficult issue and she struggled with it, as to whether another bank will be seriously injured is asking the Board to predict the future and is also a judgment call, noting that Security State Bank of Fergus Falls' opinion of what seriously injured is might be very different from her opinion. Member Quale stated it is noted in the application there are seven banks in Fergus Falls, and Security State Bank of Fergus Falls has been there since 1957 and she is assuming some of these banks came in after them and they are still in business today. Member Quale indicated her opinion is that there is no serious injury.

Member Henke indicated he agrees with Member Quale, adding it is hard to define seriously injured, but that he thinks Security State Bank of Fergus Falls took it too far when they said insolvency was serious injury, adding he questioned whether they meant to take it that far. Member Henke continued he does not think serious injury is something you can quantify, noting that Chairman Karsky's comment that Security State Bank of Fergus Falls really did not lose \$7.5 million in assets because they have the cash to reinvest, and that he noticed in the brief that the protestants were complaining about State Bank & Trust's predatory lending practices. Member Henke indicated that is another debatable issue, noting that in the testimony they referred to making loans 100 basis points below prime and in his estimation that is not a predatory loan because whether you want to believe it or not, he is looking at loans at 100 basis points under prime. Member Henke stated in his own experience he feels that is the market place. Member Henke referred to the issue in the brief of the bank being sold and stated he does not think that is serious injury to the bank or limiting the bank's ability to compete, adding he does not believe the stockholder issue is something the Board should be debating.

Chairman Karsky agreed, but stated he does not agree with the comment that the bank could not be sold; however, it might be sold at a lower price, but is still marketable. Chairman Karsky stated the issue of whether keeping the bank in the family or looking outside does not alter the fact that the bank is marketable.

Member Henke stated he does feel the bank is still saleable, that it is a nice sized community bank, and a well run community bank. Member Henke stated he feels the bank still has a lot positive attributes, noting that management is good and the people that have left have been replaced with competent people. Member Henke stated he feels the stockholders still have a valuable asset and that should not be an issue. Member Henke stated one issue the Board should probably not consider is what the Security State Bank of Fergus Falls' employees were doing

while they were still employed there, adding he knows that was an issue of injury which came through in the briefs, but that this issue was addressed earlier and is not something the Board can or should decide on because it should be handled by another jurisdiction.

Member Braseth referred to the bank being harmed because it is unable to be sold, and noted that was a transaction with one party and evidently the party, in this case the son, decided to withdraw. Member Braseth continued that we do not know what that sale was predicated on, as to whether it was a multiple of book or income, adding that in his view if the bank were on the open market they would not have any problem selling. Member Braseth added that community banks historically and continue to command a good fair price if they are in good, strong communities and well run.

Member Moldenhauer stated her bank was in a similar situation a few years ago when they were kicked out of their building and had to relocate; it came down to whether the bank was hurt or whether the community was hurt, adding it does not really matter if Mr. Lindholm is going to have to pay less for that bank or if he lost money as that is the brick and mortar and this issue comes down to whether the customers and community are hurt.

Chairman Karsky stated when you read the brief from the protestants they spend a great deal of time talking about serious injury and they have in their brief their offers of proof, most of which are things the Board did not think were in its jurisdiction to look at, and he wanted to reiterate that is still the way he feels today. Chairman Karsky stated if this truly was corporate raiding they have an avenue to go to and they can sue; whether or not it is right or wrong the bank in Fergus Falls enjoyed a pretty good opportunity for 2½ years where they got \$40 million in growth because of the Bank of the West changing hands from Community First to Bank of the West. Chairman Karsky continued that there are ways to keep people in your bank, noting that Member Moldenhauer referred to her bank's situation; however, there were different things that could have been done which were not the Board's problem. Chairman Karsky stated in this situation if you have great employees they are being sought after every day, whether the bank is going to be sold or not or whether a branch is coming into the community, you had better lock them up with contracts and incentives if you need to give them reasons to stay, and does not feel this is a Board issue.

Chairman Karsky indicated the protestants spent a lot of time talking about what they felt was serious injury, and he wanted to state on the record that he disagrees with a lot of the statements in the briefs regarding loans that they offer or the discount on loans. Chairman Karsky noted before the meeting he talked about Farm Credit Services and the pricing they are able to offer, and yet no one seems to think that is predatory, while they are taking your best customers every day by competing in that market, noting that is probably why Member Henke is looking at 100 basis point below prime loans in order to keep those customers, which is a management decision.

Chairman Karsky stated he spent a lot of time reading both sets of briefs and in his own mind he does not believe that by approving the branch in Fergus Falls the Security State Bank of Fergus Falls is going to be seriously injured.

Member Moldenhauer added Security State Bank of Fergus Falls might lose a few dollars like her bank and a lot of other banks do, but it will not be serious injury.

Member Monson stated that same impact would be felt just by the LPO, so you are hanging your injury on that just by the opportunity for a customer to go somewhere else. Member Monson continued that the counter brief stated that Security State Bank of Fergus Falls' profits will be 50% of last years; however, he would question that, and if that is the case that is outside the scope of the competition, and as Member Henke mentioned those assets are still in the bank, it is just the utilization of those assets.

Chairman Karsky stated that is a good point and the one thing that he was disappointed in the whole hearing process was that the accountant was there and the Board never received any projections about what the \$7.5, \$10, \$12, or \$20 million would do to the bank because of the loss of those earnings and what they projected those earnings to be. Chairman Karsky stated there was nothing to substantiate that it is going to be 50% of those earnings, and the Board should have been given that type of information, along with a prediction on the amount of deposits they will lose and how the funding in those issues would come into play.

Member Moldenhauer stated she wondered if the accountant's testimony was cut off. Chairman Karsky stated he felt it would have been very relevant and if the administrative law judge would have said that was not relevant he would have said that is the type of information he wanted to hear.

Chairman Karsky stated the Board has reviewed all the criteria and asked if any of the Board members had any other issues to discuss.

Member Monson stated he thinks this Board is doing what it needs to do, which is to address the criteria being presented; adding that he feels very comfortable with the comments that were made by the Board today. Member Monson stated he feels the Board is somewhat in agreement; however, without getting into the other issues of serious injury that Member Henke mentioned, he stated this issue does sadden him by virtue of as professionals who have a responsibility to the communities they serve to add integrity and to have honesty and the outcome is all of us are losing because there were some people who did not do the right thing. Member Monson stated at the end of the day you can have the profits and the strong business, but you still have to live with yourself.

Assistant Attorney General Webb stated he wanted to address the fact that Member Moldenhauer stated the witness from Eide Bailly was not allowed to go on and discuss certain sheets and was not asked questions, but noted that the questions that were asked were objected to on relevance issues; however, that did not prevent the witness from going on, and additional questions could have been asked. Assistant Attorney General Webb stated that basically the process worked and the questions would have to be elicited from the other side.

Member Moldenhauer stated she realized that, but noted the witness was very frustrated; adding that she totally agreed with what Member Monson said and that the Fergus Falls community is probably going back and forth talking about bankers which does not do any banker any good.

Chairman Karsky stated it would be appropriate for someone to make a motion as to whether or not to approve or disapprove this application by State Bank & Trust.

It was moved by Member Braseth and seconded by Member Henke to approve the application by State Bank & Trust, Fargo, to establish an interstate branch at 128 West Cavour Avenue, Fergus Falls, Minnesota.

Chairman Karsky commented he feels there are some things that could have been done different and rationalized in his mind that if State Bank & Trust had hired one person from the Fergus Falls bank and get this application approved. Chairman Karsky questioned whether this changes the circumstances in the end,

and this case we just know that upfront four or five people left, but if State Bank & Trust had first gotten the application approved with one employee, then later the rest of the people could have come over it may not have been as tough of a situation.

Member Braseth stated from his own experience over the last two or three years he has lost five staff members to competing banks, noting that it is difficult but is part of the business. He stated if employees are given better opportunities in their mind and they will likely take advantage of that opportunity.

Member Henke stated he agrees and does not feel this is unique to the banking industry either; adding what may be an opportunity to one person may not be to the next. Member Henke stated he sympathizes with Security State Bank of Fergus Falls in the loss of staff; however, unfortunately those are not issues this Board has to consider when looking at the statute.

Chairman Karsky added he feels Mr. Lindholm is a very good banker who reacted to the situation by hiring people and has been very successful in his bank, noting he has a good strategy that he should be able to use to his advantage and compete. Chairman Karsky stated he feels Mr. Lindholm will survive and has not been in this business this long to now lock the doors and walk away.

Member Monson stated at the end of the day Security State Bank of Fergus Falls is still a locally owned hometown bank, which is an opportunity to leverage. Member Monson added that a comment he had made with regard to the Hatton application “that the customer is the bank’s to lose”; however, in this situation it is sort of reversed, stating he thinks our employees are ours to lose. Member Monson stated if indeed they are our most valuable asset, we have to treat them like that; adding that Member Henke is correct that this is a right to work country.

Member Henke called for the question, and the motion was approved by a vote of 6 to 0, with Member Daniel abstaining.

Chairman Karsky indicated the Board also received a proposed Findings of Fact, Conclusions of Law, and Order which was included with the briefs, and asked if all the members had an opportunity to review the Findings of Fact, Conclusions of Law, and Order. Chairman Karsky stated legal counsel has looked at the Findings of Fact, Conclusions of Law, and Order, and there are several changes we would recommend.

Chairman Karsky stated one change is that normally we would have the applicant, if the application is approved, draft the Findings of Fact, Conclusions of Law, and Order; however, he would like to have the entire Board sign the Order.

The Board recessed at 10:10 a.m., and Dick Solberg, Blake Nelson, Bill Russell, Rod Jordahl, Mike Solberg, Jeff Stanislawski, Paul Lindholm, John Blume, Val Fick, Renee Lemke, Karen Grandstrand, Dave Bunde, and Bo Hurtig all left the conference call.

The Board reconvened at 10:31 a.m.

Janet Seaworth, Administrative Hearing Officer, was now present, as well as Doug Grenz, Tom Metelmann, Marilyn Foss, Bob Guillocho, Brian Reinecke, Patrick Durick, Lyman Edds, and Steve Noack.

HEARING – APPLICATION BY AXA FINANCIAL, INC., NEW YORK, NEW YORK, TO ESTABLISH AN INDEPENDENT STATE-CHARTERED TRUST COMPANY

The hearing began at 10:31 a.m., and concluded at 12:00 p.m.

The Board recessed at 12:00 p.m., and reconvened at 1:15 p.m. Janet Seaworth, Administrative Hearing Officer, was no longer present.

AMERICAN TRUST COMPANY, DICKINSON, TO ESTABLISH A BRANCH AT 2201 15TH STREET SOUTHWEST, MINOT

Assistant Commissioner Entringer reviewed his May 2, 2007, Memorandum, which included the publication information, as well as the statutory criteria found in Section 6-05-15.4 of the North Dakota Century Code. Assistant Commissioner Entringer stated it is the Department's recommendation to approve the application.

Member Braseth asked whether the name of the trust officer they hired is still confidential, and Assistant Commissioner Entringer stated it was not; however, he did not have that information available.

It was moved by Member Henke and seconded by Member Monson to approve the application by American Trust Center, Dickinson, to establish a branch at 2201 15th Street Southwest, Minot.

Member Moldenhauer asked where the employee was from, and Assistant Commissioner Entringer stated she was from Wells Fargo; informing the Board that apparently Wells Fargo has discontinued its trust operations in Bismarck and Minot and is moving all trust operations to Fargo.

The motion was unanimously carried.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Chairman Karsky noted that the Board received a copy of the draft Findings of Fact, Conclusions of Law, and Order with the proposed changes, and if Board approves the Findings of Fact, Conclusions of Law, and Order, a final copy is ready.

Assistant Commissioner Entringer attempted to add Karen Grandstrand via conference call; however, she was not available. Chairman Karsky indicated Ms. Grandstrand will be sent a copy of the Findings of Fact, Conclusions of Law, and Order after they are approved.

Chairman Karsky noted one of the changes was to have the entire Board sign the Order instead of himself on behalf of the Board.

It was moved by Member Monson and seconded by Member Moldenhauer to approve the Findings of Fact, Conclusions of Law, and Order with regard to the application by State Bank & Trust, Fargo, to establish an interstate branch at 128 West Cavour Avenue, Fergus Falls, Minnesota, as amended. The motion was carried by a vote of 6 to 0, with Member Daniel abstaining.

APPLICATION BY AXA FINANCIAL, INC., NEW YORK, NEW YORK, TO ORGANIZE A STATE-CHARTERED TRUST COMPANY IN FARGO

Chairman Karsky stated it is time for the Board to consider the application, and reviewed the notice detailing the criteria the Board should consider, including whether the place where the trust company is proposed to be located is in need of further trust company services, whether the proposed institution is adapted to filling such need, and whether the proposed incorporators are possessed of such character, integrity, reputation, and financial standing as shown by a detailed financial statement to be furnished by them that their connection with the company will be beneficial to the public welfare of the community in which such company is proposed to be located.

It was moved by Member Braseth and seconded by Member Monson to approve the application by AXA Financial, Inc., New York, New York, to establish an independent trust company to be known as Frontier Trust Company, Fargo.

Chairman Karsky asked Assistant Commissioner Entringer to review his corrected Memorandum dated May 10, 2007. Assistant Commissioner Entringer indicated he will highlight the differences between his May 2, 2007, and May 10, 2007, Memorandums. Assistant Commissioner Entringer indicated regarding capitalization for an independent trust company, the states he looked at were Arizona, Colorado, and Georgia, which are the three states he was aware of that had some sort of capital maintenance provision. Assistant Commissioner Entringer pointed out the May 2nd Memorandum utilized fiduciary assets of \$13.6 billion, whereas the May 10th Memorandum uses \$11.187 billion, which is net of the \$2.6 billion in assets that Frontier Trust Company will be resigning as trustee. Assistant Commissioner Entringer stated when applying the Arizona capital maintenance provision to the amended fiduciary assets reduces the capital by approximately \$1 million on the low and high end. Assistant Commissioner Entringer stated with respect to Colorado's capital requirement, it also went down approximately \$1 million, to \$5.593 million. Assistant Commissioner Entringer noted that Georgia's was the biggest change, and directed the Board's attention to the matrix on page 4 of the Memorandum. Assistant Commissioner Entringer pointed out in the May 2nd Memorandum he took 1/10 of 1% of nondiscretionary trust assets because all of Frontier's assets are nondiscretionary. However, all of Frontier's assets are directed trustee trust assets, which fall into the risk waiting of 1/100 of 1% of fiduciary assets and recalculating that results in a capital requirement of \$1,660,000 as opposed to \$11,600,000 in the May 2nd Memorandum. Also in the Memorandum is the North Dakota Administrative Code Section 13-02-19-03 dealing with equity capital, which sets the minimum equity capital at \$500,000 for

a new trust company but allows the Board to require additional equity capital based on the criteria set forth in the rule. The rule concludes stating the minimum equity capital level set by the Board will be such as is necessary to ensure that the applicant is adapted to the filling of the need to establish trust services.

Chairman Karsky reviewed Section 6-05-03 of the North Dakota Century Code, which states that the capital stock of a corporation may not be less than \$100,000, but goes on to state that the State Banking Board may require such additional capital, surplus, and undivided profits as it may determine is necessary to properly serve the area and to protect the public interests. The Board shall take into consideration peer group ratios or federal standards and guidelines when determining whether any additional capital is required. Chairman Karsky noted when the statutes are redone in the future this can be made clearer as far as where we want to go.

Chairman Karsky noted that Assistant Commissioner Entringer and Examiner Tom Metelmann have worked on this application quite extensively over the last several months, and one issue that was discussed is the amount of capital, which as you know was proposed to be \$500,000.

Member Henke inquired whether the Department would address capital maintenance in the rewrite of the regulation in the future, and Chairman Karsky indicated that is correct.

Chairman Karsky continued that obviously there would be input from the industry, as we would not come in with a recommendation without consulting the industry.

Member Henke inquired if today we established that \$1 million is the amount of capital necessary and include a maintenance provision, but two years later we change the regulation, would the regulation then apply to this trust company. Chairman Karsky indicated it would but would depend on how the law is written because you could include a time period over which the regulation or maintenance is phased in.

Chairman Karsky stated growth is a concern when an institution is this size and you want to maintain the capital at an appropriate level; although the gentlemen from BISYS indicated they have no plans to move assets into the trust

company, 1 or 2% growth of an institution this size is significant when compared to a \$20 million bank.

Chairman Karsky indicated in preliminary discussions he had indicated to the applicants a range of \$2 to \$5 million, but added he is only vote on the Board, and the numbers have changed drastically even as late as this morning. Chairman Karsky stated as of yesterday the Department would have recommended \$4 million; however, at this point \$4 million is probably too high.

Member Moldenhauer inquired as to how the capital level would be maintained, and Chairman Karsky indicated for sake of argument if you said \$3.5 million was what you wanted, the Order would indicate that they cannot fall below \$3.5 million, and at that point you could also put in a capital maintenance clause for two years which would require them to maintain additional capital as they grow.

Member Henke asked if the current capital is \$7 million as a federal savings bank, and Chairman Karsky indicated that was correct. Assistant Commissioner Entringer noted they are subject to risk based capital because they are a federal thrift, which is why the capital is that high.

Member Henke asked if the proposed capital was \$3.5 million, and Chairman Karsky indicated that was on the table and it is up to the Board to decide if that is enough or too much. Chairman Karsky continued that we do have two other independent trust companies; however, they have discretionary as well as non-discretionary assets, so their business is different than this proposed trust company.

Member Braseth stated he is willing to go along with the Department's recommendation based on the research and dialogue they have had with the applicants as well as reviewing other information.

Chairman Karsky indicated he would be willing to reduce the initial capital as long as there is a maintenance provision, but from the Department's perspective if we do not have the maintenance provision the initial capital should be higher.

Member Henke asked what the Department was considering for a maintenance provision, and Chairman Karsky indicated the applicants had informed Assistant Commissioner Entringer that the Office of Thrift Supervision

uses .004 basis points of fiduciary assets for capital; however, that was not confirmed with the OTS. Chairman Karsky confirmed the way you would arrive at a maintenance clause would be to take the initial capital divided by the amount of fiduciary assets and that would be your maintenance provision.

Member Moldenhauer asked if we have to come up with a firm number today, and Chairman Karsky indicated there are a number of options, but he felt the applicants did want a decision of the application today. Chairman Karsky said the Board could ask that the Department work with the applicants to come up with an acceptable maintenance provision or make a decision today. Member Moldenhauer stated she feels a number should be decided on today along with a maintenance clause, and have Assistant Commissioner Entringer and Examiner Metelmann review that information.

Member Monson stated he felt it would not be reasonable to say this is your amount of capital today and forever.

Chairman Karsky stated he felt if you set a capital level and a maintenance clause that it should only be good for 36 months and within that timeframe the Department should be able to arrive at a capital maintenance provision and if we can not we have to deal with it through safety and soundness issues.

Member Daniel noted most of the applicants' assets are nondiscretionary and wondered if there was anything the Board could do to prohibit that ratio from changing. Chairman Karsky indicated if the Board approves the trust charter and although their plan of operation today is nondiscretionary, they could certainly get into discretionary trust business.

Member Braseth and Monson both agreed they are fine with \$3 million initial capital, as long as there was a maintenance clause.

Chairman Karsky added that this company has been in existence for a fair amount of time, but it is different in the sense that when they start doing business it will be profitable and they should be able to retain additional capital.

The Board agreed that \$3 million initial capital with a maintenance provision would be acceptable.

Examiner Metelmann calculated the maintenance clause to be 2.7% based on \$3 million, and \$11,187,965,401 in fiduciary assets.

The motion made by Member Braseth and seconded by Member Monson to approve the application by AXA Financial, Inc., New York, New York, to establish an independent trust company to be known as Frontier Trust Company, Fargo, was amended to provide that the initial capital was \$3 million and the capital maintenance was 2.7 basis points of nondiscretionary fiduciary assets.

Chairman Karsky asked Examiner Metelmann to review his concerns regarding recordkeeping with the Board.

Examiner Metelmann indicated what we cannot do in this trust company is to go in and get a complete list of assets and balance those assets to all of the accounts that they have. Examiner Metelmann indicated Frontier Trust Company has good control over the cash that is received and/or dispersed. Examiner Metelmann described other aspects of the operation for the State Banking Board, focusing on the fact that Frontier Trust Company does not do any recordkeeping nor does it reconcile the assets against the accounts. Examiner Metelmann also pointed out that all of the assets are held in the street name of Frontier Trust Company and in fact when the assets were purchased Frontier keeps track of how much was purchased but not the investment income from those investments. Examiner Metelmann described the process for a disbursement from a plan for the Board. Examiner Metelmann again emphasized if a plan gets out of balance and Frontier is relying on others to maintain that balancing, that as trustee Frontier has a duty to account to the persons who are the beneficial owners of the property. Examiner Metelmann indicated if they are unable to do so, they are likely going to be held liable unless they have been relieved of that duty. Examiner Metelmann noted in all other trust companies we examine we can balance the assets to the accounts and the trustee can say to the beneficial owners that we can account for the assets. Examiner Metelmann indicated Frontier Trust Company relies on BISYS as well as a number of other third party record keepers to perform the balancing of the plans. Examiner Metelmann stated he believes there is a higher risk in Frontier's model than in those trust companies that do "shadow" recordkeeping. Examiner Metelmann pointed out that on all of the other companies we attempted to check on which perform business similar to Frontier, they do shadow recordkeeping, some all the way down to the individual participant, but most at least at the plan level.

Examiner Metelmann indicated what is being proposed as a condition of the Order is that Frontier Trust Company would reconcile assets unless certain exceptions would apply; implement an accounting system enabling them to balance cash and cash equivalent assets on a daily basis; and to reconcile securities including mutual funds on not less than a monthly basis and unique assets on not less than an annual basis. Examiner Metelmann stated that is what is expected of a typical trust company. Examiner Metelmann stated in addition it is being recommended that Frontier Trust Company balance all fiduciary assets to fiduciary accounts on not less than a monthly basis.

Examiner Metelmann continued because of Frontier Trust Company's unique nature, if the trust company can obtain permission from the plan participants to shift that responsibility to any of the third party record keepers, we have agreed to go along with that provided that the plan documents reflect that fact.

In summarizing, Examiner Metelmann stated the condition would be either Frontier Trust Company do the accounting like a traditional trust company does or they get agreements that would clearly identify that Frontier Trust Company is exempt from the recordkeeping.

Examiner Metelmann read suggested language for exempting an account from recordkeeping.

Chairman Karsky noted during testimony Frontier Trust Company felt they could get those agreements amended within 12 months; however, Chairman Karsky suggested giving them at least 18 months.

Examiner Metelmann read additional language which would require Frontier to get an attorney's opinion on the amendments to the plan document, indicating it does not violate the ERISA exculpatory provisions found in 29 USC 1110. Examiner Metelmann stated the attorney's opinion must also assess whether this violates any other federal or state provision that would bar the effect of such language from fiduciary agreements. Examiner Metelmann stated an additional provision being recommended for the Order is that in the event Frontier obtains amended agreements that absolve them from a duty to account for invested assets, Frontier shall segregate all assets for which it has no duty to account from those assets not covered by amended agreements. Examiner Metelmann stated

segregated assets shall include use of a different nominee name for securities and mutual funds. It was recommended the Board include a provision in the Order that Frontier may not change its current business model without notice to and approval from the Commissioner. Examiner Metelmann clarified that this provision is suggested since the approval would give them the authority to do whatever is permitted under statute; this would simply require that if they change their business model they notify us so it gives us an opportunity to go in and make sure they have appropriate controls in place for the new activity.

Chairman Karsky stated we also ask that the Order include a provision that unless it is modified or extended by the State Banking Board, the applicants shall effect the merger between Frontier Trust Company, FSB, and Frontier Trust Company, not later than September 30, 2007. Assistant Commissioner Entringer explained that date is used because that is the date by which the purchase agreement indicates the transaction must be completed.

Chairman Karsky asked the Board if they understood where the Department was coming from with regard to the account recordkeeping and why that was a concern.

Member Moldenhauer asked if the Department was asking that the motion be amended that these provisions, as well as the capital maintenance clause, to include these recordkeeping requirements that Examiner Metelmann discussed. Chairman Karsky indicated that was correct, and he would like to work with Frontier and bring the proposed Findings of Fact, Conclusions of Law, and Order back at a later date for the Board's approval.

Member Quale asked if these would be any stricter guidelines for any other trust company, and Examiner Metelmann stated no and that you do not want to set a precedent so that if you have exceptions from the recordkeeping there are rules regarding those exceptions.

Assistant Commissioner Entringer indicated to be fair he felt the Board needed to hear the whole story, noting that we have had conference calls with representatives from BISYS, as well as Mr. Edds, talking about the fact that BISYS balances on a daily basis. Assistant Commissioner Entringer added he surveyed the other states to find out if there were other trust companies in the nation that are similar to Frontier, which do not balance or have at least shadow records. Assistant Commissioner Entringer noted none of the states that responded

indicated they had a similar situation to what Frontier's business model is, and Mr. Edds spoke to the people at BISYS trying to identify a trust company that does not have the shadow records or do the balancing and reconciliation. Mr. Entringer stated even though we do know that there is a trust company out there that does business in the same fashion as Frontier, we were not able to identify that trust company.

Assistant Commissioner Entringer noted he did speak to Kevin Swanson with the OTS to discuss their feelings regarding the lack of records, and Mr. Swanson did indicate the OTS also wrestled with this issue but ultimately decided they could come up with no compelling reason to require the recordkeeping other than the quarterly call reporting. Assistant Commissioner Entringer indicated we did speak with Mr. Edds and representatives from BISYS and told them this is where we are at and needed a solution to the issue of the recordkeeping and the solution was to amend the plan document to clearly state this is what we do and this is what we do not do.

Chairman Karsky noted that Frontier used to be a state-chartered trust company and the operation was run in the same manner it is being run today; they did not do the recordkeeping, and the fact of whether we knew or realized that fact at the time, could make our concerns over the lack of recordkeeping now simply indicative of our gain in knowledge with regard to trust operations.

Member Quale asked for clarification as to whether they either need to buy the accounting software to track the assets or get the waiver, and Assistant Commissioner Entringer indicated that is correct, adding the option they will pursue is amending the agreements. Chairman Karsky added they need to get IRS approval for the amendments to the plan documents. Assistant Commissioner Entringer clarified that the prototypes are already at the IRS and once the prototype document is approved, then IRS will ask for the additional trust documents, which is where the agreements will be amended and those documents will need to be signed by the plan administrator.

Member Henke asked Mr. Edds what Frontier maintained as a capital level. Mr. Edds indicated Frontier never did dividend any money out until approximately three years ago, and over the last three years as the OTS gained more comfort level with Frontier OTS kept dropping the level of capital that had to be maintained. Mr. Edds stated the last discussion they had with OTS indicated they could maintain .0004 of fiduciary assets for its capital.

Member Henke asked what that would be, and Examiner Metelmann stated that would be \$4.2 million based on the current level of adjusted fiduciary assets.

Member Henke noted what we are now considering is approximately \$1 million less than what OTS would require for the fiduciary assets and Assistant Commissioner Entringer stated that was correct.

Chairman Karsky stated there is a motion, along with adding Department recommended conditions motion for the Order, and Member Henke asked if the conditions could be summarized.

Chairman Karsky noted the recommended conditions: (1) that minimum capital would be \$3 million, including a maintenance clause of 2.7 basis points of total fiduciary assets, making the floor \$3 million but if they grow they would have to maintain 2.7 basis points of fiduciary assets; (2) Frontier would either have to account for the assets or get the plan agreements amended, stating that they do not do the recordkeeping, along with obtaining an attorney's opinion on that amendment to the plan document; (3) if there are any changes to the business model they would have to get approval from the Commissioner; and (4) all of the clauses would expire 36 months from the date of the Order, with the exception of the recordkeeping.

Member Quale inquired as to why we were settling for a lesser amount of capital when the OTS would require a higher level. Chairman Karsky indicated as Mr. Edds noted their capital has been coming down and he was satisfied with the maintenance provision to maintain the capital at an appropriate level. Assistant Commissioner Entringer noted the trouble with trying to set a capital level for an independent trust company is that there is not an industry standard and there is no consistency or uniformity among the various states.

Chairman Karsky asked Members Braseth and Monson if these conditions were acceptable to their motion and second, and both indicated there were.

The motion was unanimously carried, with the addition of the above listed conditions.

APPLICATION FROM AXA FINANCIAL, INC., NEW YORK, NEW YORK, TO MERGE FRONTIER TRUST COMPANY, FSB, FARGO, WITH

AND INTO THE NEWLY CHARTERED INDEPENDENT TRUST COMPANY, FRONTIER TRUST COMPANY, FARGO

Assistant Commissioner Entringer reviewed his May 2, 2007, Memorandum, noting that the publication had occurred and direct notice was sent various banks with trust powers, as well as independent trust companies in North Dakota; no comments were received nor were there any requests for copies of the application. The Memorandum also assessed compliance with North Dakota Administrative Code Chapter 13-02-13 with respect to mergers, and included the criteria the State Banking Board must consider found in Section 13-02-13-04 of the North Dakota Administrative Code.

Assistant Commissioner Entringer noted the Plan of Reorganization and Merger and the Articles of Incorporation were sent to the Secretary of State's Office for preliminary review and there were no issues other than the fact that Frontier Trust Company, FSB, has two trade names that need to be resolved before the merger occurs. The Department's recommendation is that the criteria to be considered by the Board will be met and that the Board previously determined the capital adequacy in the approval of the trust charter, and it was the Department's recommendation given the acceptable level of capital to approve the merger proposal, and adopt a proposed Order attached to the Memorandum.

Chairman Karsky noted one of the items the Department had concerns with was a provision in the bylaws which allows the shareholders to remove a Board member or any or all Board members with or without cause. Examiner Metelmann noted our statute requires staggered terms for the Board of an independent trust company, and noted the Department expects the Board to be active and responsive to the needs of the institution.

Member Moldenhauer asked if Mr. Edds could address the Department's concern, and Mr. Edds indicated in the past there were a lot of things the Board was not involved in but in recent history the Board has been a lot more active than in the past, noting that the chairman of the audit committee is a North Dakota resident, and they are active and management tries to keep the Board apprised of the activities. Mr. Edds noted because they do not have any discretionary assets there is not a great need for an expansive trust committee because they do not decide on the purchase of assets for the plans. Mr. Edds noted they are keeping the Board apprised of what they are doing and they approve everything they do; as an example they recently reviewed the Business Continuity Plan.

Member Moldenhauer asked how often the Board meets, and Mr. Edds indicated the Board meets quarterly.

Member Monson stated he was looking at the clause as more of a remedial action, and Examiner Metelmann noted that he understood, but questioned what would cause the shareholders to remove a director, adding that the director could be acting in what he/she believes to be the best interest of the trust company. Mr. Edds noted if you remove one of our independent North Dakota directors you still have to replace them with a North Dakota resident. Examiner Metelmann indicated in Mr. Edds' biography it noted he reports to a vice president of AXA Financial, Inc., and Examiner Metelmann felt that the president of the trust company should report to the Board of Directors. Mr. Edds stated he believes the board of directors has the authority to set who he reports to.

Chairman Karsky noted he simply wanted to make the State Banking Board aware of this provision and that it should be clear that the State Banking Board will hold the Board of Directors of Frontier Trust Company responsible for the actions of the trust company.

It was moved by Member Moldenhauer and seconded by Member Daniel to approve the merger application for Frontier Trust Company, FSB, Fargo, to merge with and into the newly chartered independent trust company, Frontier Trust Company, Fargo. The motion was unanimously carried.

It was moved by Member Monson and seconded by Member Moldenhauer to approve the proposed Order in the Matter of the Merger Application of Frontier Trust Company, FSB, Fargo with and into Frontier Trust Company, Fargo; however, the date the applicant was given to effectuate the merger was changed from May 10, 2008, to September 30, 2007. The motion was unanimously carried.

**CHANGE OF CONTROL APPLICATION BY BISYS GROUP, INC.,
ROSELAND, NEW JERSEY, TO ACQUIRE FRONTIER TRUST
COMPANY, FARGO**

Assistant Commissioner Entringer reviewed his Memorandum and noted that the application was received February 16, 2007, and notice was included in the publication of the charter and merger applications.

Assistant Commissioner Entringer stated approval criteria found in Section 6-08-08.1(4), North Dakota Century Code, is noted in the Memorandum, and the application proposal notes that BISYS Group, Inc., will acquire 100% of Frontier Trust Company, to be funded through an existing credit facility with repayment to occur via cash flows of normal operations of the BISYS Group, Inc.

Assistant Commissioner Entringer indicated there are no plans to change the current business plan of Frontier Trust Company, and the financial information for the BISYS Group, Inc., notes this would be a fairly nominal part of their operations. The recommendation is to approve the change of control application by the BISYS Group, Inc., based on the approval criteria set forth in the Memorandum.

It was moved by Member Braseth and seconded by Member Moldenhauer to approve the change of control application for the BISYS Group, Inc., Roseland, New Jersey, to acquire Frontier Trust Company, Fargo. The motion was unanimously carried.

The Board went into closed session at 2:39 p.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary